In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 612

FRANZ GEORG BLOCH, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 116-121) is reported at 102 F. Supp. 457. The opinion of the Court of Appeals (R. 129-136) is reported at 200 F. 2d 63.

JURISDICTION

The judgment of the Court of Appeals was entered on November 21, 1952. (R. 137.) The peti-

tion for a writ of certiorari was filed February 18, 1953. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

Whether the court below erred in holding that payments made to taxpayer, a nonresident alien, during the taxable years are taxable under Section 211 (a)(1)(A) of the Internal Revenue Code as royalties for the use of a patent.

STATUTE AND REGULATIONS INVOLVED

The pertinent statute and Treasury Regulations are printed in the Appendix, *infra,* pp. 12-16.

STATEMENT

This case originated as a suit for refund of income taxes. In the District Court both parties filed motions for summary judgment. (R. 78-111, 112-115.) The District Court granted taxpayer's motion as to the first, second and third causes of action, which relate to the same subject matter but for different taxable years, and denied his motion as to the fourth cause of action. (R. 122-123.) On appeal from the judgment as to the first three causes of action, the Court of Appeals reversed the District Court. (R. 129-137.)

The relevant facts are contained in a stipulation of facts incorporating exhibits annexed to the taxpayer's complaint (R. 72-77) and may be summarized as follows:

Taxpayer, a citizen of Germany, was at all times material a nonresident alien who was not engaged in business in the United States. On January 15, 1932, he entered into a partnership agreement with two other persons for the purpose of manufacturing and selling bimetal thermometers. A fourth person later became a partner. Shortly after the formation of the partnership and within the scope of partnership activities, taxpayer developed a bimetal thermometer on which a United States patent was later issued on August 14, 1934, and on which patents were also issued by Great Britain, Germany and Czechoslovakia. (R. 72-73.)

On April 29, 1935, taxpayer and his co-partners entered into an agreement (R. 48-62) in which they were designated as the "Licensors" and the Weston Electrical Instrument Corporation of Newark, New Jersey, as the "Licensee" (R. 48). Under the agreement the Weston Corporation was required to and did pay "royalties". On taxpayer's share of the "royalties" for the taxable years, the Weston Corporation withheld and paid withholding taxes to the United States in the following amounts (R. 74, 75, 76-77):

	1944	1945	1946
Share of royalty...	$5,718.02	$6,525.28	$8,091.28
Tax withheld	1,715.40	1,957.50	2,427.38

Taxpayer's claims for refund of the withheld taxes were rejected by the Commissioner (R. 74-75, 76, 77) and this suit for refund followed.

The preamble to the agreement between the partners and the Weston Corporation recited that a patent had been granted on an invention "for a mechanical device responsive to temperature variations" (R. 48), that the patent and beneficial interests therein were held by taxpayer as trustee on behalf of himself and the persons who were his partners,[1] and that, in consideration of the sum of $75,000, the "Licensors" (hereinafter referred to as the partners) had agreed to grant to the "Licensee" (the Weston Corporation) an "exclusive license to make, use, exercise and vend the invention" under the patent subject to stipulations and conditions contained in the agreement (R. 48-49). The agreement provided that the Weston Corporation was to pay the partners $40,000 immediately and in consideration of that payment the partners granted the Weston Corporation an exclusive license to make, use, exercise and vend all kinds of thermometers, thermostats and temperature measuring instruments, or parts thereof, under the protection of the patent rights, for the duration thereof and throughout the United States and its territories and possessions, subject to the payment of the royalties and to the conditions and stipulations contained in the agreement. (R. 49.) During the continuance of the license, the Weston Cor-

[1] Actually, the preamble mentions only two of taxpayer's partners, Karl and Friedrich Fuchs, but it is stipulated that William J. B. Jansen became a partner "subsequent to the 9th day of April, 1935". (R. 73.)

poration was to pay a "royalty" of four cents for every household or domestic bath thermometer and 10 per cent of the net invoice price of other thermometers, etc. (except clinical thermometers, for which separate provision was made), manufactured and sold by or on behalf of the Weston Corporation, but the minimum amount of royalties was to be $25,000 a year. (R. 50-51.) The $35,000 difference between the contract consideration ($75,000) and the down payment ($40,000) was to be liquidated by the payment of "excess" royalties. (R. 51.) Provision was also made for reduction of the royalty rate on types other than household and clinical instruments when the total royalty payments (excluding the "excess" royalties) reached certain amounts. (R. 51-52.) When the partners ascertained the cost of developing and manufacturing thermometers for clinical purposes, they were to offer the Weston Corporation a sole and exclusive license for an additional payment of $25,000. If the Weston Corporation decided not to acquire the license for manufacturing and selling this type of thermometer, the partners were at liberty to sell that license to a third party, with half of the cash received therefor to go to the Weston Corporation. If the Weston Corporation acquired the license for manufacturing and selling clinical thermometers, it was to pay royalties at a rate to be mutually agreed upon but not less than eight per cent nor more than 15 per cent of the net invoice

price of such thermometers. (R. 52.) As and when requested by the Weston Corporation, the partners were to supply, at a price of $300, six machines for the manufacture of articles according to the invention—a machine on which the partners had applied for a United States patent and on which they granted the Weston Corporation an exclusive license, without charge, to make, use, vend and supply to sub-licensees. (R. 54.)

The agreement also contained a number of miscellaneous stipulations and conditions. The partners were to pay "all renewal fees and do all such acts and things as may be necessary to maintain and keep on foot the said Letters Patent". The Weston Corporation was not to raise any question concerning, or any objection to, the validity of the patent on any ground whatever. (R. 53.) In the event of infringement of the patent, the partners were to "take the necessary proceedings and steps to stop such infringement", with the cost of any legal proceedings to be borne equally between the partners and the Weston Corporation. (R. 57.) The Weston Corporation was to advise the partners of any improvement or further invention it might make in connection with the manufacture of thermometers, thermostats and temperature measuring instruments and the like, or parts thereof, and at the cost of the partners was to "do all such acts and things for enabling the Licensors to obtain in their own names Letters of Patent in the United

States, in respect of any such improvement or further invention with respect to the invention or the said machine" and the partners were to permit the Weston Corporation to make, use, exercise and vend it without payment of any further royalties. (R. 56.) The Weston Corporation could grant sublicenses only to persons or firms which were of good repute and worthy of confidence and could not in any manner whatsoever sell or assign "the entire license granted hereby" to a third party without the consent in writing of the partners. (R. 54-55.) During the continuance of the license, the partners were not themselves, without the consent of the Weston Corporation, to make, use, exercise or vend any thermometers, thermostats and temperature measuring instruments, or parts thereof, under the patent rights or any improvement or further invention and were not, without the consent of the Weston Corporation, to grant any such license to any other person or firm within the territory. (R. 58.) The Weston Corporation was to start manufacturing thermometers, thermostats, and temperature measuring instruments under the license within six months after the date of the agreement and the agreement was immediately to come to an end if the Weston Corporation decided at any time to discontinue making thermometers, thermostats and temperature measuring instruments and the like and so notified the partners in writing. (R. 59.) The partners could cancel the licensing agreement

if at any time during three consecutive years the total royalties due on the basis of sales did not reach the minimum royalty of $25,000. (R. 59-60.) The partners were also at liberty to terminate the license if the Weston Corporation committed, or allowed to be committed, any breach of the agreement, or could not meet its financial obligations, or should be wound up voluntarily or otherwise (except for the purpose of reorganization) or if it became 30 days in arrears on any royalty payment, except that the Weston Corporation should have 30 days to correct any such breach or default. (R. 58-59.)

ARGUMENT

The precise question here involved is whether the court below erred in holding that the payments made to taxpayer, a nonresident alien, during the taxable years are taxable under Section 211 (a)(1)(A) of the Internal Revenue Code (Appendix, *infra*) as royalties for the use of a patent. Upon the facts of this case the decision seems clearly correct. It is in conformity with this Court's decision in *Commissioner* v. *Wodehouse,* 337 U. S. 369, and does not conflict with any decision rendered since the *Wodehouse* decision.

The cases of *Hofferbert* v. *Briggs,* 178 F. 2d 743 (C.A. 4th); *Kavanagh* v. *Evans,* 188 F. 2d 234 (C.A. 6th); and *Allen* v. *Werner,* 190 F. 2d 840 (C.A. 5th), alleged by taxpayer (Pet. 7) to be in conflict with the present decision, all involved cit-

zens of the United States. The case of *Commissioner* v. *Celanese Corp.*, 140 F. 2d 339 (C.A. D.C.), involved a nonresident alien, but that case was decided prior to *Wodehouse* and in addition seems adequately distinguishable on its facts.[2] Of the Tax Court cases cited by taxpayer (Pet. 7), those which involved nonresident aliens (*Parke, Davis & Co.* v. *Commissioner,* 31 B.T.A. 427, and *Kimble Glass Co.* v. *Commissioner,* 9 T.C. 183) were decided prior to *Wodehouse.*

That the taxation of a nonresident alien under Section 211 (a)(1)(A) poses a different problem from the treatment properly to be accorded transactions of citizens under Section 117 of the Code (26 U.S.C. 1946 ed., Sec. 117) was held by the Second Circuit in *Rohmer* v. *Commissioner,* 153 F. 2d 61, and affirmed by this Court in the *Wodehouse* case. This distinction was applied by the Court of Claims in *Herwig* v. *United States,* 105 F. Supp. 384, by the court below in the present case, and again by the Court of Claims in its decision handed down on March 3, 1953, in *Estate of Ernest E.*

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[2] Two important factors in the *Celanese* case not present here were that the payments to the taxpayer there were based on the percentage of the "net profits" of a corporation and in case of bankruptcy of the assignee corporation the patents were not to be returned to taxpayer, whereas here the taxpayer was to receive a percentage of sales, a right which would follow the patents into the hands of any sub-licensee, and here the taxpayer could terminate the license in any one of a number of contingencies, including bankruptcy of the licensee.

Wemp v. *United States,* differentiating that case from the present decision.[3] There are, so far as we know, no decisions to the contrary since *Wodehouse.*

The legislative purpose of Congress in enacting Section 211(a)(1)(A) relied upon by this Court in the *Wodehouse* case supports the decision below. In that case the Court held that lump sum payments received by a nonresident alien for the serial rights to stories constituted income taxable as royalties under Section 211 (a)(1)(A). Among other things, the Court there stated (p. 388) that it was the difficulty of ascertaining income derived from sales of property by nonresident aliens not engaged in business in this country which induced Congress to relieve such nonresident aliens of tax on gains from the sale of property. The Congressional purpose was "to limit future taxes on nonresident alien individuals to those readily collectible". (Pp. 388-389.) Taxes on the payments involved in the present case are just as "readily collectible", if not more so, than taxes on the lump sum payments involved in *Wodehouse* and, moreover, are payments which the parties themselves treated as royalties for the use of the patent, rather than as part of the purchase price on a sale of the patent. Even if it were doubtful whether the agreement for payment

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[3] Were it not for this distinction between the intended meaning of Section 211 (a)(1)(A) and Section 117, the decisions in the present case and the *Wemp* case would be in substantial conflict.

of the "royalties" constituted a license (and we do not believe it is), there is no more reason to favor construction of the agreement as a sale than there was to the transactions involved in *Wodehouse*.

The diminishing importance of the problem here presented with respect to nonresident aliens is indicated by taxpayer himself in his statement (Br. 21) that in certain recent income tax treaties even "true" royalties for the right to use patents derived from within the United States have been exempted from United States tax.

CONCLUSION

The distinction drawn by the court below and by the Court of Claims in the *Wemp* case, *supra*, between taxation of a nonresident alien under Section 211 (a)(1)(A) and the application of Section 117 to transactions of citizens is correct and is supported by this Court's decision in the *Wodehouse* case. There are no conflicting decisions on this point, and the question is of diminishing importance. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MARCH, 1953.

APPENDIX

Internal Revenue Code:

SEC. 119. INCOME FROM SOURCES WITHIN UNITED STATES.

(a) *Gross Income from Sources in United States.*—The following items of gross income shall be treated as income from sources within the United States:

* * * * * *

(4) *Rentals and royalties.*—Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property; and

(5) *Sale of real property.*—Gains, profits, and income from the sale of real property located in the United States.

(6) *Sale of personal property.* — For gains, profits, and income from the sale of personal property, see subsection (e).

* * * * * *

(26 U.S.C. 1946 ed., Sec. 119.)

SEC. 143. WITHOLDING OF TAX AT SOURCE.

* * * * * *

(b) [As amended by Secs. 108 (a) and 160 (a) (2) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Nonresident Aliens.*—All persons, in whatever capacity acting * * * having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, shall * * * deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 30 per centum thereof. * * *

* * * * * *

(26 U.S.C. 1946 ed., Sec. 143.)

SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) *No United States Business or Office.*—

(1) *General rule.*—

(A) [As amended by Secs. 106(a) and 160(e) of the Revenue Act of 1942, *supra*] *Imposition of tax.*—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 30 per centum of such amount, * * *.

* * * * * *

(26 U.S.C. 1946 ed., Sec. 211.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.143-2. *Fixed or Determinable Annual or Periodical Income.*—Only fixed or de-

terminable annual or periodical income is subject to withholding. The Internal Revenue Code specifically includes in such income, interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations and emoluments. But other kinds of income are included, as, for instance, royalties.

Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. * * * The income derived from the sale in the United States of property, whether real or personal, is not fixed or determinable annual or periodical income. * * *

SEC. 29.211-7. *Taxation of Nonresident Alien Individuals.*— * * *

(a) *No United States business—General rule.*— * * * For the purposes of section 211 (a), the term "amount received" means "gross income". Specific items of fixed or determinable annual or periodical income are enumerated in the Internal Revenue Code as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, an-

nuities, compensation, remunerations, and emoluments, but other fixed or determinable annual or periodical gains, profits, and income are also subject to the tax, as, for instance, royalties. As to the determination of fixed or determinable annual or periodical income, see section 29.143-2. * * *

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FRANZ GEORG BLOCH,
Plaintiff-Petitioner,

v.

THE UNITED STATES OF AMERICA,
Defendant-Respondent.

REPLY BRIEF FOR THE PETITIONER.

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REPLY BRIEF FOR THE PETITIONER.

The very excellent Brief in opposition to the petitioner's application for a writ of certiorari makes, most concisely, the eight following points:

First. The decision below is "in conformity" with the *Wodehouse* case (Br. 8).

Counsel for the United States agreed (Br. 8) that the decision involved the interpretation of a leading case decided by this Court, *Commissioner* v. *Wodehouse,* 337 U. S. 369 (1949). They do not explain, however, how the principle of that case, which related to the transfer of a *part* of a *copyright,* applies to the transfer of an *entire patent.* This is an important question of first instance, which should be resolved by this Court to avoid confusion and unnecessary litigation in the lower courts.

Second. No conflict with any decision since the *Wodehouse* case.

Counsel for the United States argue (Br. 8-11) that there is no conflict with any case decided since the *Wodehouse* case. In making this argument, they apparently assumed that what constitutes a sale in the case of a citizen may not be a sale in the case of a non-citizen, for they distinguish (Br. 8-9) *Hofferbert* v. *Briggs,* 178 F. 2d 743 (4th Cir., 1949); *Kavanagh* v. *Evans,* 188 F. 2d 234 (6th Cir., 1951) and *Allen* v. *Werner,* 190 F. 2d 840 (5th Cir., 1951) on the ground that they involve citizens, but the Court in the decision below held (R. 134) that the agreement here involved did not constitute a sale, whereas these cases held that agreements identical in all material respects with that involved in the instant case *were sales.* Furthermore, the case of *Estate of Wemp* v. *United States,** decided by the Court of Claims since the filing of the application in the instant case, reaches this same result. All four cases held that an exclusive license to make, use and vend a patent, whether or not the consideration is payable in installments or in a lump sum, is a sale. The decision below is to the contrary (R. 134-136), and the Court below itself recognized the conflict (R. 136).

The *Wodehouse* case involved the sale of a part of a copyright, and the majority found the transaction taxable only because administrative practice under prior law had been incorporated in the enactment of the statute there involved. Both the majority and the minority opinions by this Court recognized that had there been a sale of the entire copyright, the transaction would not have been taxable (pp. 382, 384, 392 and 407).

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* ..... F. Supp. ....., No. 49512, decided March 3, 1953 [53-1 USTC ¶9235, 3 P-H 1953 Fed. Tax Serv., ¶72,362].

The Court below recognized that if there had been a sale of the patent, no tax was payable (R. 130). It imposed a tax only by holding that there was not a sale (R. 134), and this conclusion was reached primarily on the ground that the consideration involved was measured by sales of the patented article (R. 134-135). This reasoning is entirely novel, and squarely contrary to many decisions of the Courts of Appeals and the Tax Court of the United States (R. 136; Pet. Br. 27-31).

Third. The *Celanese* case not applicable.

It is argued (Br. 9) that the *Celanese* case* is inapplicable because it was decided prior to the *Wodehouse* case, and is distinguishable on its facts. For the reasons already discussed, the decision of the *Wodehouse* case did not overrule the *Celanese* case, for the latter involved the transfer of an *entire patent*. Nor does the *Celanese* case appear to be distinguishable simply because the royalty there was based on "net profits" rather than "gross receipts". The Court below recognized no such distinction, conceding a conflict (R. 136). Nor is the nature of the termination provisions or the bankruptcy provisions of importance (Pet. Br. 26-27). As the Court of Claims said in the recent *Wemp* case, *supra*:

> "Clauses in these patent agreements permitting their termination by either party upon the occurrence of stated events or conditions have been construed by the courts to be conditions subsequent so as not to defeat the sale of the patent. *Lamar* v. *Granger*, 99 F. Supp. 17; *Kimble Glass Company, supra.*
>
> "These provisions, as well as the others that appear in the agreement, are ones which have become peculiar to the patent field. In *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24, the court stated:

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* *Commissioner* v. *Celanese Corporation of America*, 140 F. 2d 339 (D. C. Cir., 1944).

> 'Patent property is the creature of statute law and its incidents are equally so and depend upon the construction to be given to the statutes creating it and them, * * * It is not safe therefore, in dealing with a transfer of rights under the patent law to follow implicitly the rules governing a transfer of rights in a chose in action at common law.'
>
> "Recognition of this distinction must be made when construing agreements transferring patent rights. From the viewpoint of both parties, payment on a royalty basis is the only equitable method by which a fair consideration can be obtained. Provision for termination is needed on the inventor's side since it would be his only relief if the manufacturer stifled production of his invention. A like provision is required by the manufacturer since the invention may prove to be worthless. Since there is no absolute way of insuring that the device patented is completely original, the possibility of infringement is present and the manufacturer desires protection against it." (pp. 6, 7)

Fourth. No conflict with Tax Court decisions.

The *Wodehouse* case did not overrule the *Parke, Davis** and *Kimble Glass*** cases. They involved transfers of an entire patent, which both the majority and minority opinions recognized as non-taxable in the *Wodehouse* case (pp. 382, 384, 392 and 407).

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* *Parke, Davis & Co.* v. *Commissioner*, 31 BTA 427 (1934).

** *Kimble Glass Co.* v. *Commissioner*, 9 T. C. 183 (1947).

Fifth. The taxation of a nonresident alien under Section 211(a)(1)(A) differs from the taxation of a citizen under Section 117 (Br. 9-10).

Petitioner does not question this statement. Although a citizen may not be taxable on the sale of a part of a copyright (*Herwig et al.* v. *U. S.*, 105 F. Supp. 384 (Ct. Cl. 1952)), a nonresident alien is taxable because this Court has found that the consideration for such a transfer was subject to withholding prior to the Revenue Act of 1936, and there has been no intent to exempt such income from tax in subsequent statutes (*Wodehouse* v. *Commissioner, supra*).

But this is not the issue involved in the instant case. Conceding the correctness of this principle, it does not follow that a nonresident alien is taxable upon the sale of an entire patent. In the *Wodehouse* case, in considering the legislative history of the Revenue Act of 1936, as applied to sales of a part of a copyright, this Court found no disposition on the part of Congress to exempt from tax receipts which had previously been subject to withholding. In this connection, this Court pointed to the fact that receipts from the sale of a part of a copyright were "wholly income", and that the tax was therefore "readily collectible". The situation is otherwise in the case of the sale of an entire patent, the same problem of cost basis and computation of profits being involved as in the case of the sale of securities or other kinds of personal or real property.

Sixth. The parties treated the payments as royalties rather than sale price.

The basis for this statement (Br. 10) by counsel for the United States is not clear. It is true that the Weston Corporation withheld from the payments to the petitioner, but its error cannot be construed to be an estoppel on the part of the petitioner. In fact, errors on the part of the taxpayers themselves in numerous cases have not prevented refunds when the errors were discovered (see cases cited at page 23 of petitioner's main brief).

Seventh. "* * * no more reason to favor construction of the agreement as a sale than there was to the transactions involved in *Wodehouse*" (Br. 11).

Counsel for the United States have apparently misinterpreted this Court's opinion in the *Wodehouse* case. This Court did not hold in that case that there was not a sale. It held that whether or not there had been a sale of a part of a copyright, it was nevertheless a transaction which Congress intended to subject to tax.

The instant case involves entirely different considerations. Here there is a sale of an entire asset (R. 121). The statute, the regulations and a consistent line of authority clearly exempt such a transaction from tax.

Eighth. The problem is of "diminishing importance" (Br. 11).

The problem involved in the instant case has been made the subject of eleven treaties since 1940 (Pet. Br. 21). Under these treaties even "true royalties" which are not

installment payments of the purchase price of an entire patent are exempted from tax. But this emphasizes the importance of the problem, rather than its diminishing importance. Only nine of these eleven treaties are now in effect, and they embrace less than 10% of the countries of the world, and less than 12%* of its population. During the twenty-five years prior to 1951, the United States granted over 60,000 patents to residents of countries which today have no such treaty provisions. This represents over half of all patents granted during those years to nonresident aliens. Furthermore, it is understood that the Alien Property Section of the Bureau of Internal Revenue, alone, is currently withholding action on more than thirty similar cases awaiting the final outcome of the instant case. Numerous other cases are undoubtedly in various stages of administrative processing, and the same issue is involved in the case of *Eterpen Financiera Sociedad de Responsabilidad Limitada* v. *United States,* 108 F. Supp. 100, recently decided by the Court of Claims,** in which an application for a writ or certiorari will shortly be filed.

Conclusion.

Counsel for the United States do not dispute the fact that the instant case involves a novel interpretation of a leading decision of this Court. The decision of the Court below that taxpayer's grant of an exclusive license did not constitute a sale is contrary to numerous decisions of other Courts of Appeals and the Tax Court of the United States involving both nonresidents and residents. The questions raised by the decision below are of consider-

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* Considerably less than 6% of the world's population, if the 155 million residents of the United States are not included in this percentage.

** Decided November 4, 1952; motion for rehearing denied February 3, 1953.

able public importance, and unless resolved by this Court will lead to much confusion and unnecessary litigation.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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